

1 UNITED STATES COURT OF APPEALS  
2 FOR THE SECOND CIRCUIT  
3

4 SUMMARY ORDER  
5

6 THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL  
7 REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS  
8 OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS  
9 OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A  
10 RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL  
11 OR RES JUDICATA.  
12

13 At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the  
14 Thurgood Marshall United States Courthouse, at Foley Square, in the City of New York, on the  
15 6th day of July, two thousand and six.  
16

17 PRESENT:

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19 HON. ROGER J. MINER,  
20 HON. GUIDO CALABRESI,  
21 HON. PAUL R. MICHEL,<sup>1</sup>  
22 *Circuit Judges.*  
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25  
26 MICHAEL S. KIMM,

27  
28 *Plaintiff-Counter-Defendant-Appellant,*  
29

30 v.

No. 05-2407-cv

31  
32 CHANG HOON LEE and CHAMP, INC.,  
33 *Defendant-Counterclaimant-Cross-Defendant-Appellees,*  
34

35 IN CHUL KOH,  
36 *Defendant-Cross-Defendant,*  
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38 JOON HWAN LEE,  
39 *Defendant-Counter-Claimant,*  
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<sup>1</sup> The Honorable Paul R. Michel, Chief Judge of the United States Court of Appeals for the Federal Circuit, sitting by designation.

1 KOREA CENTRAL DAILY, JIN SE KIM, SEGYE TIMES and JASON YOON,  
2 *Defendants-Cross-Defendants-Appellees,*

3  
4 BERGEN NEWS, doing business as Korean Bergen News, WMBC-TV, JOHN DOES/JANE  
5 DOES 1-10, ABC COMPANIES 1-10, JOHN DOE 1 and JOHN DOE 2,  
6 *Defendants-Cross-Defendants*

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8 CHUNG SENG KOH,  
9 *Defendant-Appellee,*

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11 SAFENET COMMUNICATIONS CORP. and INCHOL YON,  
12 *Counter-Claimants-Appellees.*

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14  
15  
16 For Plaintiff-Counter-Defendant-Appellant Michael S. Kimm:

17 JORDAN D. YUELYS (Michael S. Kimm, *on the brief*), Hackensack, N.J.

18  
19 For Defendant-Counterclaimant-Cross-Defendant-Appellees Chang Hoon Lee and Champ, Inc.:

20 MICHAEL D'AGOSTINO, Becker & D'Agostino, New York, N.Y.

21  
22 For Defendant-Cross-Defendant-Appellee Korea Central Daily News:

23 KENNETH P. NORWICK, Norwick & Schad, New York, N.Y.

24  
25 For Defendants-Cross-Defendants-Appellees Jin Se Kim and Segye Times:

26 JOHN J. LYNCH (John F. Burleigh, *on the brief*), Jacobs DeBrauwere LLP, New York,  
27 N.Y.

28  
29 For Defendant-Appellee Chung Seng Koh:

30 FRANK J. FRANZINO, JR., Meier Franzino & Scher, LLP, New York, N.Y.

31  
32 For Counterclaimants-Appellees Safenet Communications Corp. and Inchol Yon

33 MICHAEL D'AGOSTINO, Becker & D'Agostino, New York, N.Y.

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35 Appeal from a final decision of the United States District Court for the Southern District  
36 of New York (Baer, *J.*)

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3 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND**  
4 **DECREEED** that the judgment of the district court is **AFFIRMED**.  
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8 Plaintiff-Counter-Defendant-Appellant Michael S. Kimm (“Kimm”), an attorney, filed  
9 suit against individual, corporate, and media defendants (collectively, “Defendants-Appellees”)  
10 alleging violations of the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18  
11 U.S.C. § 1961 et seq., as well as breach of fiduciary duty and defamation under state law. Kimm  
12 alleges that Defendants-Appellees engaged in a conspiracy to deny him legal fees and undermine  
13 his professional name and reputation. Defendants-Appellees Inchol Yon, Safenet  
14 Communications Corp., Chang Hoon Lee, and Champ, Inc. filed counterclaims against Kimm  
15 alleging defamation and frivolous or vexatious litigation. On January 18, 2005, the district court  
16 (Baer, *J.*) granted motions to dismiss filed by Defendants-Appellees. Judge Baer permitted  
17 Kimm to seek leave to amend the pleadings, but on February 14, 2005, he denied Kimm’s  
18 request to amend, finding insufficient changes to cure the failings in the complaint. Both of the  
19 district court’s orders on the pleadings are presently on appeal. We assume the parties’  
20 familiarity with the facts, the procedural history, and the specific issues on appeal.

21 Kimm’s complaint alleges that Defendants-Appellees, over a period of nearly ten years,  
22 engaged in myriad attempts to discredit and defame Kimm, as well as to breach a contract  
23 entitling Kimm to legal fees. A violation of 18 U.S.C. § 1962(c), which is the only substantive  
24 RICO violation that Kimm maintains on appeal, “‘requires (1) conduct (2) of an enterprise (3)  
25 through a pattern (4) of racketeering activity.’” *United States v. Allen*, 155 F.3d 35, 40 (2d Cir.

1 1998) (quoting *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985)). RICO defines  
2 “racketeering activity” as, *inter alia*, acts indictable for mail fraud in violation of 18 U.S.C. §  
3 1341, wire fraud in violation of 18 U.S.C. § 1343, and Hobbs Act extortion in violation of 18  
4 U.S.C. § 1951. *See* 18 U.S.C. § 1961(1).

5 Kimm alleges that Defendants-Appellees engaged in numerous racketeering activities of  
6 mail fraud/wire fraud and Hobbs Act extortion. To bring such claims, Kimm must demonstrate  
7 RICO standing, *i.e.*, that “he [or she] has been injured in his [or her] business or property by the  
8 conduct constituting the violation.” *Sedima*,, 473 U.S. at 496; *see also Hecht v. Commerce*  
9 *Clearing House, Inc.*, 897 F.2d 21, 23 (2d Cir. 1990) (“[I]n order to have standing, a plaintiff  
10 must show: (1) a violation of section 1962; (2) injury to business or property; and (3) causation  
11 of the injury by the violation.”).

12 We find that Kimm’s complaint — either as written or with Kimm’s putative  
13 amendments — fails to demonstrate standing. As written, the generalized reputational harms  
14 alleged, including the risk of future lost business commissions, are too speculative to constitute  
15 an injury to business or property. *See Hecht*, 897 F.2d at 24. As putatively amended, Kimm’s  
16 allegation of lost legal fees — that is, of legal fees incurred by Kimm but not awarded to him in  
17 the course of his successful prosecution of related state court actions for earlier legal fees — fails  
18 to satisfy RICO causation requirements. *See id.* at 23-24 (stating that “the RICO pattern or acts  
19 proximately cause a plaintiff’s injury if they are a substantial factor in the sequence of  
20 responsible causation, and if the injury is reasonably foreseeable or anticipated as a natural  
21 consequence.”). As was the case in *Hecht*, although prosecution of these state actions may have

been “factually caused by defendants’ RICO violations, it was not a foreseeable natural consequence sufficient for proximate causation.” *Id.* at 24.

We therefore AFFIRM the decision of the district court to dismiss Kimm’s complaint.

We DENY Defendants-Appellees’ motions for sanctions.

For the Court,  
ROSEANN B. MACKECHNIE,  
Clerk of the Court

by: \_\_\_\_\_